

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED REVISIONS TO JESSAMINE-SOUTH)
ELKHORN WATER DISTRICT'S RULES) CASE NO. 2011-00198
REGARDING THE PROVISION OF SEWER)
SERVICE)

ORDER

Jessamine-South Elkhorn Water District ("Jessamine-South Elkhorn District") has proposed revisions to its rules for the sewer service that would require applicants for sewer service or existing customers to obtain all necessary easements for an extension of service or sewer facility relocation. At issue is whether the imposition of responsibility for the acquisition of easements on prospective applicants or existing customers is contrary to 807 KAR 5:006, Section 5. Finding in the affirmative, we deny the proposed revisions.¹

Jessamine-South Elkhorn District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that distribute water for compensation to approximately 2,654 customers in Jessamine County, Kentucky.² It also operates sewage collection facilities that serve approximately 537 customers in Jessamine County, Kentucky.³

¹ On May 9, 2011, Jessamine-South Elkhorn District filed its proposed tariff revisions with the Commission. On June 8, 2011, we suspended the proposed revisions for five months and initiated this proceeding. An informal conference was held in this matter on August 22, 2011. Commission Staff issued a request for information to the water district on January 17, 2012. Jessamine-South Elkhorn District has fully responded to that request. No other parties have intervened in this matter.

² *Annual Report of Jessamine-South Elkhorn Water District (Water Division) to the Public Service Commission for the Calendar Year Ended December 31, 2010* at 5, 27.

³ *Annual Report of Jessamine-South Elkhorn Water District (Sewer Division) to the Public Service Commission for the Calendar Year Ended December 31, 2010* at 1, 12.

Jessamine-South Elkhorn has filed with the Commission proposed revisions to its Rules and Regulations for Furnishing Sewer Service.⁴ These revisions generally address the responsibility of an applicant for service or of an existing customer seeking

⁴ The rules at issue, with the proposed changes indicated in bold italics, are set forth below. Revised Rule 4 at pertinent paragraph states:

No service requested shall be granted unless the property of said applicant is contiguous to an existing sewer main of the District. Should the applicant desire to have the existing system extended for service, same shall be accomplished as required hereafter. *Should applicant request to have service extended, it will be the applicant's requirement and responsibility to provide any necessary easement(s) on private land. The easement(s) shall be prepared by the District's attorney, at the applicant's expense, from descriptions and landowner information provided by the applicant. The path of the easement shall be subject to the District's approval.*

The following paragraph has been added to Rule 5:

Should a situation occur where it would be feasible to provide service to an applicant at a point of delivery not on the applicant's premises, then it would be the applicant's requirement and responsibility to provide the necessary easement(s) on private land. The easement(s) shall be prepared by the District's attorney, at the applicant's expense, from descriptions and landowner information provided by the applicant. The path of the easement shall be subject to the District's approval.

Rule 12 has been revised as follows:

The District may, at the request of a customer or other person, relocate, change or modify existing District owned equipment, mains or appurtenances. Those requesting shall reimburse District for such changes at actual cost including but not limited to appropriate legal, administrative, engineering and overhead costs. *If additional easement(s) are required, it shall be the customer or other person's requirement and responsibility to provide or obtain the necessary easement(s) from other private landowner(s). The easement(s) shall be prepared by the District's attorney, at the customer or other person's expense, from descriptions and landowner information provided by the customer or other person. The path of the easement shall be subject to the approval of the District.*

The following paragraph has been added to Rule 32:

If additional easement(s) are required, it shall be the Customer or other person's requirement and responsibility to provide or obtain the necessary easement(s) from other private landowner(s). The easement(s) shall be prepared by the District's attorney, at the Customer or other person's expense, from descriptions and landowner information provided by the Customer or other person. The path of the easement shall be subject to the approval of the District.

the relocation of existing sewer facilities to provide easements. More specifically, they provide that, should the proposed extension or relocation of sewer facilities require the acquisition of easements on private lands, the applicant or customer must obtain the easement.⁵

In support of the proposed revisions, Jessamine-South Elkhorn District notes that no applicant for service has yet been unable to obtain the required easements for an extension.⁶ It asserts that the revisions are aimed primarily at real estate subdivision developers, who are responsible for most sewer main extension requests, and are necessary to prevent “taxing the entire customer base for the cost of extensions which only benefit the [real estate] developer.”⁷ The water district argues that existing customers receive no benefit from a sewer main extension and that real estate subdivision developers are in the best position to allocate the cost of easement acquisition through their pricing of real estate tracts.

The proposed revisions clearly are contrary to 807 KAR 5:006, Section 5(3).

This regulation provides:

Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility. No utility shall require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service. The cost of obtaining easements or rights-of-way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with the applicable extension administrative regulation.

⁵ Jessamine-South Elkhorn District also proposes revisions to Rule 9 to permit the collection of legal fees and costs that a court of jurisdiction awards. We found that these revisions are reasonable and have not addressed them in great detail.

⁶ Jessamine-South Elkhorn District’s Response to Commission Staff’s First Request for Information, Item 1(b) (filed Jan. 30, 2012).

⁷ *Id.*, Item 19(a).

The Commission has previously interpreted this regulation as prohibiting a water utility from requiring an applicant to obtain easements for an extension and placing responsibility for easement acquisition on the water utility.⁸

While conceding that the proposed revisions are contrary to 807 KAR 5:006, Section 5(3),⁹ Jessamine-South Elkhorn District argues that a deviation is appropriate in this instance. Noting that most sewer extensions are made to real estate subdivisions, the water district asserts that real estate subdivision developers have already allocated easement acquisition costs through the sale of real estate tracts. To require the water district to assume the acquisition costs by requiring the water district to obtain easements, the water district argues, ultimately places the burden of these costs on the water district's existing customers by increasing expenses that must be recovered through rates.¹⁰

The Commission finds no merit in these arguments. First, they fail to consider that most water utilities have the power of eminent domain.¹¹ A water district can thus obtain an easement from an obstinate landowner where an individual applicant cannot. Moreover, this power provides a water district with greater leverage to deal with such landowners, serves as an incentive for such landowners to negotiate, and creates greater opportunity for acquiring an easement at a more favorable price.

Second, 807 KAR 5:006, Section 5(3), does not require a utility to absorb the cost of easement acquisition. It provides that the cost of the easement acquisition be

⁸ See, e.g., Case No. 94-404, *Orbin and Margie Brock v. Western Rockcastle Water Ass'n* (Ky. PSC Feb. 23, 1996); Case No. 98-332, *Regina Lee Jones v. Western Rockcastle Water Ass'n* (Ky. Jan. 26, 1999); Case No. 2005-00356, *Annette D. Calvert v. U.S. 60 Water Dist.* (Ky. PSC Jun. 2, 2006).

⁹ Jessamine-South Elkhorn District's Response to Commission Staff's First Request for Information, Item 3(a).

¹⁰ *Id.*, Item 3(b).

¹¹ See, e.g., KRS 74.090; KRS 96.080; KRS 416.340.

included in the cost of the main extension. As the Commission's sewer regulations make no provision for apportioning the cost of sewer main extensions,¹² the applicant for service effectively bears all easement acquisition costs. Jessamine-South Elkhorn's argument that its position protects existing customers, therefore, lacks any support.

Finally, we question Jessamine-South Elkhorn District's position that extensions provide no benefit to existing customers. The extension of sewer mains permits the water district to increase its customer base for both sewer and water customers. An expanded customer base means a larger number of customers over which to spread fixed costs and should result in lower per-customer costs for fixed cost expenses.

The Commission also finds the proposed requirement that the water district's attorney must prepare all easements to be unreasonable. While we recognize the need for the water district's legal counsel to review any easement to ensure its adequacy, we find no reason why the easement must in all cases be prepared by the water district's counsel. To the extent that an applicant for service has obtained an easement through his or her own efforts, he or she should not be compelled to use another entity's legal counsel.¹³

Having reviewed the proposed revisions and evidence of record and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. Jessamine-South Elkhorn District's proposal to revise Rules 4, 5, 12 and 32 of its Rules and Regulations for Furnishing Sewer Service are denied.

¹² The Commission recognizes the absence of any method to allocate the cost of sewer main extensions as a significant deficiency with 807 KAR 5:071. All other utility sectors have regulations that specifically address this issue. See, e.g., 807 KAR 5:022, Section 9(16) (extensions of gas mains); 807 KAR 5:041, Section 11 (extension of electric lines); 807 KAR 5:066, Section 11 (extensions of water mains). We are of the opinion that this issue should be reviewed as part of our ongoing review of Commission regulations.

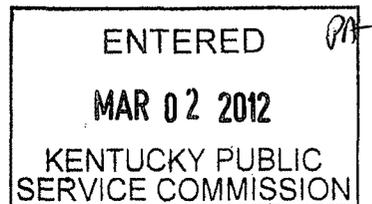
¹³ The water district may still assess a reasonable fee to cover the costs of legal review of a tendered easement. Such fee should be stated in the water district's filed rate schedule.

2. Jessamine-South Elkhorn District's proposal to revise Rule 9 of its Rules and Regulations for Furnishing Sewer Service is granted.

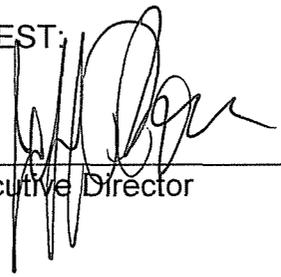
3. Jessamine-South Elkhorn District shall make sewer main extensions in accordance with 807 KAR 5:006, Section 5(3) and the provisions of this Order.

4. Within 20 days of the date of this Order, Jessamine-South Elkhorn shall file revised tariff sheets that reflect the proposed revisions approved in this Order.

By the Commission



ATTEST:



Executive Director

Case No. 2011-00198

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